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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-190932

DATE: March 20, 1978

MATTER OF: American Sheet Metal Corporation

DIGEST:

Protest which was sent by certified mail on the eleventh work day after protester received formal notification of adverse agency action, and was received by GAO on the twelfth work day, is untimely. Since protest was not mailed more than five days prior to final date for filing protest, provision of GAO bid protest procedures permitting consideration of late protests by certified mail is not for application.

American Sheet Metal Corporation has protested the proposed award of a contract by the Air Force to Flowe Painting Company under invitation for bids (IFB) No. F44600-77-B-0035 following that agency's decision to permit Flowe to correct a mistake in its bid. The Air Force subsequently awarded the contract despite the pendency of the protest.

The IFB was issued for the maintenance of certain roofs, gutters, and downspouts at Langley Air Force Base, Virginia. Bids were opened on September 12, 1977, and Flowe was the apparent low bidder. Flowe then alleged a mistake in its bid and was allowed to correct its mistake. American Sheet Metal subsequently protested the Air Force's decision to the Air Force on November 11, 1977. This protest was denied by a letter dated November 28, 1977 which was received by American Sheet Metal on December 1, 1977. American Sheet Metal then protested to our Office by a certified letter postmarked December 16, 1977, which was received by us on December 19, 1977.

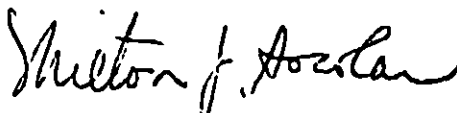
Our bid protest procedures provide in part that in order to be considered by our Office, a protest must be filed within 10 working days of formal notification

of initial adverse agency action. 4 C.F.R. § 20.2(a). Since American Sheet Metal received the Air Force denial of its protest on December 1, American Sheet Metal's protest to our Office should have been filed on or before December 15 in order to be timely.

Counsel for the protester maintains that mailing of the protest constitutes constructive receipt of the same. However, our procedures specifically state that with regard to the time for filing, "the term 'filed' means receipt in the contracting agency or in the General Accounting Office as the case may be." 4 C.F.R. § 20.2 (b)(3). Even if the protester's contention were accepted, the protest would be untimely, since the postmark on the envelope shows that it was posted on the eleventh day after the protester was advised of adverse agency action.

Our procedures also provide for the consideration of protests which are untimely filed if they are sent by certified mail "not later than the fifth day * * * prior to the final date for filing a protest as specified herein. The only acceptable evidence to establish the date of mailing shall be the U.S. Postal Service postmark on the wrapper or the original receipt * * *." This provision is of no help to the protester since the postmark indicates the letter was mailed the day after the final date for filing the protest.

Accordingly, the protest is dismissed.

for 
Paul G. Dembling
General Counsel